

**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

**In the Matter of**

Dr. John G. Pierre  
2247 Church Avenue  
Brooklyn, New York

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File No. EB-00-NY-003

NAL/Acct. No. 20013238-0001

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: November 15, 2000**

By the District Director, New York Office, Enforcement Bureau:

**I. Introduction**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Dr. John G. Pierre, ("Dr. Pierre") has apparently violated Section 301 of the Communications Act of 1934 ("Act")<sup>1</sup>, as amended, by operating an unlicensed radio transmitter on frequencies of 91.3 and 102.9 MHz. We conclude that Dr. Pierre is apparently liable for a forfeiture in the amount of eleven thousand dollars (\$11,000).

**II. Background**

2. On November 5, 1998, in connection with complaints of unauthorized radio broadcast in Brooklyn, New York, Commission agents using a mobile direction finding vehicle ("MDF") located the source of radio transmissions on 91.3 MHz to 2247 Church Avenue, Brooklyn, New York ("2247 Church Avenue"). On November 17, 1998, Commission agents interviewed Dr. Pierre at his business address, 2247 Church Avenue, concerning the unlicensed operation. On November 18, 1998, the New York District Office sent a Warning Letter, for unlicensed operation, by First Class and Certified Mail Return Receipt Requested to Dr. Pierre.

3. On March 2, 1999, Commission agents hand-delivered a Warning Letter to Dr. Pierre at 2247 Church Avenue, for continued unlicensed operation on 91.3 MHz. On December 29, 1999, and

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<sup>1</sup> 47 U.S.C. § 301.

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February 24, 2000, a Commission agent using a MDF vehicle monitored the frequency 91.3 MHz in Brooklyn, NY, in connection with complaints of unlicensed radio broadcasts in Brooklyn, New York. The agent traced radio transmissions on 91.3 MHz to 2247 Church Avenue.

4. On June 20, 2000, Commission agents assisted U. S. Marshals during an execution of a warrant to seize radio-transmitting equipment at 2247 Church Avenue, Brooklyn, New York. Dr. Pierre was present during the execution of the warrant.

5. On June 28, 2000, a Commission agent using a MDF vehicle located the source of transmissions on 91.3 MHz to the First Grace Community Church, located at 3813 Church Avenue, Brooklyn, New York. A sign outside shows John G. Pierre as the pastor. On July 12, 2000, the New York District Office sent a Warning letter by First Class and Certified Mail Return Receipt Requested, to the church, concerning the unlicensed operation on 91.3 MHz.

6. On August 22, 2000, a Commission agent using a MDF vehicle located the source of transmissions on 102.9 MHz to 55 Linden Boulevard, Brooklyn, New York (“55 Linden”). A follow-up investigation by Commission agents found that Dr. Pierre had rented a room in an apartment at 55 Linden, where the radio equipment was installed.

7. On September 6, 2000, and September 7, 2000, a Commission agent using a MDF vehicle located the source of transmissions on 102.9 MHz to 2247 Church Avenue, Brooklyn, New York, Dr. Pierre’s business address.

8. On September 14, 2000, September 16, 2000, and September 17, 2000, a Commission agent using a MDF vehicle located the source of transmissions on 102.9 MHz to 451 Kingston Avenue, Brooklyn, New York. The station’s programs included advertisement and promotion of Dr. Pierre’s business located at 2247 Church Avenue, Brooklyn, New York.

### III. Discussion

9. Dr. Pierre has violated Section 301 of the Act by operating an FM broadcast station on a frequency of 91.3 MHz, on December 29, 1999, February 24, 2000, and June 28, 2000; and on 102.9 MHz, on August 22, 2000, September 6, 2000, September 7, 2000, September 14, 2000, September 16, 2000, and September 17, 2000, without a license or other authorization issued by the Commission.

10. Based on the evidence before us, we find that Dr. Pierre willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Section 90.403(e) of the Rules. The Commission’s *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997),

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<sup>2</sup> Section 312(f)(1), which also applies to Section 503(b), provides: [t]he term “willful”, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provisions of the Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

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*recon. denied*, 15 FCC Rcd 303(1999) (“Policy Statement”), sets the base amount for operation of an unlicensed transmitter at eleven thousand dollars (\$11,000). In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act<sup>4</sup>, that include the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Policy Statement and statutory factors to the instant case, we believe that a monetary forfeiture of eleven thousand dollars (\$11,000) is warranted for the violation.

### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act<sup>5</sup> and Sections 0.111, 0.311 and 1.80 of the Rules<sup>6</sup>, Dr. Pierre is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of eleven thousand dollars (\$11,000) for willfully and repeatedly violating Section 301 of the Act.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Dr. Pierre SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 20013238-0001.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 20013238-0001.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.<sup>7</sup>

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<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>7</sup> See 47 C.F.R. § 1.1914.

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17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Dr. John G. Pierre, 2247 Church Avenue, Brooklyn, New York 11226.

FEDERAL COMMUNICATIONS COMMISSION

Alexander Zimny  
District Director  
New York Office